



Agenda Date: 11/10/09
Agenda Item: VB

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF UNITED WATER)
ARLINGTON HILLS SEWERAGE INC. FOR APPROVAL)
OF MUNICIPAL CONSENT TO CONSTRUCT, INSTALL)
OPERATE AND MAINTAIN A SEWER SYSTEM FOR)
SHADOW WOODS, 500 VALLEY ROAD AND 600)
VALLEY ROAD BLOCK 61, LOTS 42.01, 42.02, AND)
42.03 IN THE BOROUGH OF MOUNT ARLINGTON AND)
APPROVAL OF THE ISSUANCE OF A REVISED TARIFF)
SHEET SETTING FORTH UNITED WATER ARLINGTON)
HILLS SEWERAGE INC.'S ENLARGED SERVICE)
TERRITORY PURSUANT TO N.J.A.C. 14:1-5.11)

ORDER

DOCKET NO. WE07020084

Nathaniel H. Yohalem, Esq., c/o Mary Campbell, Esq., United Water New Jersey,
Harrington Park, NJ for Petitioner

Stefanie Brand, Director, Department of Public Advocate, Division of Rate Counsel

(SERVICE LIST ATTACHED)

BY THE BOARD:

United Water Arlington Hills Sewerage Inc. ("Petitioner" or "Company") is a public utility of the State of New Jersey subject to the jurisdiction of the Board of Public Utilities ("Board") and renders sewer services to the general public in a portion of the Borough of Mount Arlington ("Borough"), located in the County of Morris. Petitioner's plant capacity is 158,000 gallons per day.

By its Petition filed with the Board on February 6, 2007, the Company requested the approval, pursuant to N.J.S.A. 48:2-14, to include within its franchise area the property designated on the Borough's Tax Map as Block 61, Lots 42.01, 42.02, and 42.03. The consent to provide sewer service to this area was granted to the Petitioner by the Borough through an Ordinance adopted on December 11, 2006.

Attached to the Petition, is a Developer's Agreement between Petitioner and Valley Road Development, LLC and Seasons Associates, LLC (collectively the "Developer") pursuant to which the Developer proposes to construct certain residential and commercial projects within the proposed expanded franchise area. An amended Developer's Agreement was executed on August 31, 2009 and subsequently submitted to the Board. The residential property will consist of 60 townhouses and a clubhouse to which a total of 19,200 average gallons per day are

allocated to be added to the Company's service area. The residential property is referred to as Phase 1 in the Developer's Agreement. The commercial property referred to in the Developer's Agreement consists of office building A and office building B known as Phases 2 and 3, respectively. According to the terms of the Developer's Agreement, no Phase of the Project will be connected to Petitioner's system until all necessary governmental approvals for the Phase have been obtained and, with respect to Phases 2 and 3, Petitioner has first determined that it has "Sufficient Capacity" (as set forth in the Developer's Agreement).

After appropriate notice, a hearing in the above matter was held at the Board's Newark offices on June 27, 2007. Joseph Quirolo, Esq. presided at said hearing as the Board's designated Hearing Examiner.

At the hearing, Petitioner relied on the testimony of its Project Engineer, Antonio A. Vicente. Mr. Vicente estimated that approximately 120,000 average gallons per day in capacity is presently dedicated to existing customers served by the Petitioner's system. Mr. Vicente further testified that with the addition of the estimated 19,200 average gallons per day required to serve Phase 1 of the new service area (which consists of 60 townhouses and a clubhouse), the Company would still be operating at less than the full capacity of the system, which is 158,000 gallons per day. He noted that the expanded service area would provide the Petitioner with new customers. It was also the testimony of the witness that current customers would not be subjected to any increases in rates for service and that the ability of the Company to continue to provide safe, adequate and proper service would not be compromised.

Pursuant to the Amended Developer's Agreement, Phase 2 of the project will require an additional 10,700 gallons per day. Phase 3 of the project will require an additional 19,200 gallons per day. An implementation of these two phases would exceed the current plant capacity. To address this issue, Mr. Vincente indicated that Petitioner had filed a New Jersey Pollution Discharge Elimination System ("NJDEPS") permit for the subsurface disposal beds for the sewerage treatment plant. This application seeks to increase the permitted flow from the system to 204,225 gallons per day. Mr. Vincente further testified that an analysis of the beds by Leggette, Brashears and Graham was favorable to the increase. Mr. Vincente further testified that the DEP recommended and analysis of the treatment plant. Mr. Vicente further noted that the Company would not serve the new customers within the expanded service area prior to the procurement for said customers of appropriate approvals from the DEP. The witness also contemplated that the Company's costs to provide sewer services would be exceeded by revenues to be received for services rendered.

On October 30, 2009, Petitioner submitted a copy of the NJDEPS permit for its disposal beds, which was effective November 1, 2009. Petitioner further indicated it was preparing to submit the plans for the plant improvements necessary to increase permitted system flow. Once these plans are submitted, there is a 3-6 month DEP approval process. Once DEP approval is granted, Petitioner estimates that construction of the plant improvements will take approximately 1 year.

Mr. Vicente further testified that providing services in the expansion franchise area will not be accomplished until completion of all necessary lines and associated facilities which will be constructed and paid for by the Developer. According to Mr. Vicente, the Developer would not receive a refund, rather, the Developer will construct and install the facilities necessary to connect with Petitioner's system and thereafter said facilities will be owned and maintained by Petitioner. The Amended Developer's Agreement specifically recognizes that the Developer is not entitled to refunds of its deposit for construction of the system expansion.

By letter dated September 21, 2009, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), submitted its comments. Rate Counsel does not oppose approval of the proposed transaction, however, Rate Counsel conditions its non-opposition to several provisions that are recited in full below.

Based on the foregoing and a review of the complete record in this matter, the Board HEREBY FINDS that:

1. The consent granted to United Water Arlington Hills Sewerage Inc. by the Borough of Mount Arlington to provide sewer services to the additional area within the Borough known as Block 61, Lots 42.01, 42.02, and 42.03 is necessary and proper for the public convenience and is in the public interest;
2. The cost to United Water Arlington Hills Sewerage Inc. in providing sewer services will be exceeded by revenues received by the Company for services rendered in the new franchise area; and
3. The approval of the consent will not result in increased rates to current customers or compromise the Company's ability to provide safe, adequate and proper service.

Accordingly, the Board HEREBY ORDERS that the municipal consent granted to United Water Arlington Hills Sewerage Inc. by the Borough of Mount Arlington to include in the Company's service area certain lands known as Block 61, Lots 42.01, 42.02 and 42.03 is HEREBY APPROVED pursuant to the provisions of N.J.S.A. 48:2-14 and 48:13-11.

The approval granted hereinabove shall be subject to the following provisions:

1. The approval granted herein is contingent on (a) a determination by Petitioner for each Phase of the project referred to in the Developer's Agreement that Petitioner has "Sufficient Capacity" (as set forth in the Developer's Agreement) to provide service to each such Phase and that water for fire protection service and domestic and/or commercial water service for each such Phase is available; and (b) Petitioner and/or the Developer first obtaining all necessary DEP approvals to expand plant capacity (as is necessary) so that the systems total usage will not exceed plant capacity by the addition of each such Phase;
2. Petitioner shall not connect commercial buildings A and/or B, phases 2 and 3 respectively, if connecting such facility would cause Petitioner to exceed 158,000 gallons per day, unless (a) Petitioner's pending DEP permit applications regarding the expansion of its plant capacity are granted; or (b) Petitioner otherwise obtains additional plant capacity, and Petitioner has notified Board Staff of the final disposition of its DEP permit application and the then current permissible plant capacity;
3. The rates for service to the expanded franchise area customers shall be those set out in the Petitioner's current tariff approved by and on file with the Board;
4. Approval of this municipal consent ordinance does not constitute Board approval of any costs or expenses associated with this franchise extension. Any determination

as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, the cost of construction, Contributions in

5. Aid of Construction ("CIAC"), the cost of connection or any related capital improvements, and the allocation of such costs and expenses, including any determinations pursuant to N.J.A.C. 14:3-8.5(i) and (j), shall be made in an appropriate subsequent proceeding;
6. The journal entries relating to the new service territory of Petitioner are approved for accounting purposes only;
7. This Order shall not affect or in any way limit the authority of this Board or of this State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioner;
8. This Order shall not be construed as directly or indirectly fixing, for any purposes whatsoever, any value of any tangible or intangible assets now owned or hereafter to be owned by the Petitioner; and
9. The Petitioner shall not depreciate the portion of the water system that is funded by CIAC and subject to 26 U.S.C. 118(c).

DATED: 11/10/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox

JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

Joseph L. Fiordaliso
JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta
NICHOLAS ASSELTA
COMMISSIONER

Elizabeth Randall
ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

Kristi Izzo

In the Matter of the Petition of United Water Arlington Hills Sewerage Inc. for Approval of Municipal Consent to Construct, Install, Operate and Maintain a Sewer System for Shadow Woods, 500 Valley Road, and 600 Valley Road, Block 61, Lots 42.01, 42.02, and 42.03 in the Borough of Mount Arlington and Approval of the Issuance of a Revised Tariff Sheet Setting Forth United Water Arlington Hills Sewerage Inc.'s Enlarged Territory Pursuant to N.J.A.C. 14:1-5.11

DOCKET NO. WE07020084

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